

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

GEOFFRY C.,

Plaintiff,

-against-

6:23-CV-786 (LEK/CFH)

MARTIN O'MALLEY,<sup>1</sup>

Defendant.

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**MEMORANDUM-DECISION AND ORDER**

**I. INTRODUCTION**

Plaintiff Geoffry C. filed this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision by the Commissioner of Social Security. Dkt. No. 1 (“Complaint”). Both parties filed motions for judgment on the pleadings supporting their respective positions, Dkt. No. 12 (“Plaintiff’s Motion”), Dkt. No. 14 (“Defendant’s Motion”), and Plaintiff filed a reply, Dkt. No. 15. On August 23, 2024, the Honorable Christian F. Hummel, United States Magistrate Judge, issued a report and recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(d). Dkt. No. 16 (“Report and Recommendation”). In the Report and Recommendation, Judge Hummel recommended granting Plaintiff’s Motion, denying Defendant’s Motion, and remanding the case to the Social Security Administration for further administrative proceedings.

See *id.* at 19.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

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<sup>1</sup> Martin O’Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O’Malley should be substituted for Kilolo Kijakazi as the defendant in this suit.

## II. BACKGROUND

The Court presumes familiarity with the factual allegations detailed in the Report and Recommendation. See generally id.

In the Report and Recommendation, Judge Hummel assessed Plaintiff's argument that the "Appeals Council erred in its assessment of additional medical evidence." Id. at 7. Judge Hummel determined that, since there was "a reasonable probability that [P]laintiff's additional evidence would change the outcome of ALJ Hoffman's decision, the Appeals Council erred by summarily rejecting and failing to consider the additional evidence." Id. at 17. In light of the new medical records, Judge Hummel determined that the ALJ's decision was not supported by substantial evidence. See id. at 17. Accordingly, Judge Hummel recommended remand for further proceedings. See id. at 19.

## III. LEGAL STANDARD

"Within fourteen days after being served with a copy [of the Magistrate Judge's report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) ("The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record."). Clear error "is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed." Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019) (cleaned up). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the

magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.”) (internal quotation marks omitted). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

#### **IV. DISCUSSION**

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

#### **V. CONCLUSION**

Accordingly, it is hereby:

**ORDERED**, that the Report and Recommendation, Dkt. No. 16, is **APPROVED and ADOPTED in its entirety**; and it is further

**ORDERED**, that Plaintiff’s Motion for judgment on the pleadings, Dkt. No. 12, is **GRANTED**; and it is further

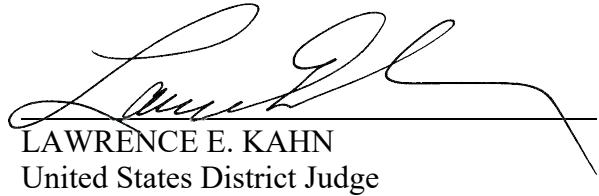
**ORDERED**, that Defendant’s Motion for judgment on the pleadings, Dkt. No. 14, is **DENIED**; and it is further

**ORDERED**, that the Commissioner’s decision is **REVERSED AND REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings; and it is further

**ORDERED**, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: September 10, 2024  
Albany, New York



LAWRENCE E. KAHN  
United States District Judge